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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,732	12/24/2003	Stephen Carley	39685-0040	9110
42624	7590	09/26/2005		
DAVIDSON BERQUIST JACKSON & GOWDEY LLP 4300 WILSON BLVD., 7TH FLOOR ARLINGTON, VA 22203			EXAMINER WACHSMAN, HAL D	
			ART UNIT 2857	PAPER NUMBER

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10743,732

Applicant(s)

CARLEY, STEPHEN

Examiner

Hal D. Wachsman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 9-14 and 18-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 9-14, 18-25 and 28-36 is/are allowed.
- 6) ☒ Claim(s) 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Page 13 of the reply filed 7-26-05 indicates that the Applicant is withdrawing the two new figures 3A and 6. However, no formal instruction such as in an Amendments to the Drawings section, was provided to indicate that these new figures are cancelled. Appropriate correction is required.

2. The new Abstract provided in the reply filed 7-26-05 is objected to because it is less than 50 words. Appropriate correction is required.

3. Claims 1-4, 9, 11, 13, 14, 18-23 and 26-36 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, lines 6-7, cite "the first set of measurements" however the antecedent basis is "at least a first set of measurements". This same type of problem also occurs in claim 1, line 10, claim 2, lines 2 and 3, claim 4, line 3, claim 13, line 2, claim 18, lines 4 and 5, claim 19, line 2, claim 20, lines 10-11, 13-14, claim 21, lines 8, 9, 11, 15, claim 28, line 2, claim 32, lines 3 and 4, claim 33, lines 2 and 3 and claim 34, lines 2 and 3. Claim 4, lines 3-4, cite "at least the first set of measurements and the at least a first set of measurements" however was the second occurrence of the first set of measurements here intended to be referring to the second set of measurements ? Claim 11, line 6, cites "the at least a first set of measurements" however was this intended to be "the at least a second set of measurements" ? Claim 21, line 13, cites "the processor" however the antecedent basis is "processing module". The preamble of claim 26 cites "A method for analyzing the performance of a streaming media service operating on a network..." however the body of the claim makes no reference to the streaming media service. The preamble of claim 27 cites "A method

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comprising:" however a method for what exactly is being referred to here ? Claim 27, lines 5-6, cite "the single metric" however it appears that the antecedent basis is "collected metric". Claim 27, line 7, cites "performance data statistics" however the antecedent basis is "variance statistics". Claim 31, lines 1-2, cites "the variance statistic" however exactly which variance statistic is being referred to here ? The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker et al. (6,073,089).

As per claim 26, Baker et al. (Abstract, col. 1 lines 26-36, 46-48) disclose "collecting performance data including a first set of measurements... each measurement of the first set of measurements taken at a different time". Baker et al. (col. 1 lines 46-48, col. 3 lines 18-22) disclose "collecting at least a second set of measurements including at least a single measurement of the single network parameter". Baker et al.

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(Abstract, col. 4 lines 11-46) disclose "determining performance data statistics based on the collected performance data" and "based at least in part on the performance data statistics, alerting a user about network performance that is outside acceptable tolerance or control limits".

As per claim 27, Baker et al. (Abstract, col. 1 lines 26-36, 46-48) disclose "collecting periodic measurements of a network performance metric". Baker et al. (col. 4 lines 18-22, col. 7 lines 64-67, col. 8 lines 1-20) disclose automatically calculating variance statistics of the collected metric in which the statistics include mean and standard deviation of the periodic measurements of the single metric. Baker et al. (Abstract, col. 1 lines 48-57, col. 4 lines 11-46) disclose "using a history of performance data statistics to alert a user...that are outside acceptable tolerance or control limits".

6. Claims 1-4, 9-14, 18-25 and 28-36 are allowed subject to the appropriate correction of the 37 C.F.R. 1.75(a) objections noted in paragraph 3 above.

7. Applicant's arguments with respect to claims 26 and 27, which are newly submitted claims added on in the reply of 12-28-04, have been considered but are moot in view of the new ground(s) of rejection. The Examiner also respectfully notes that the Baker et al. reference applied in the new ground(s) of rejection was cited by the Applicant on the IDS filed 12-24-03.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hal D Wachsman  
Primary Examiner  
Art Unit 2857

HW

September 23, 2005